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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

IN RE  
ESTATE OF CARMEN CASANOVA.

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IMELDA CASANOVA,

Plaintiff and Respondent,

v.

IVANA SALAS,

Objector and Appellant.

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B212721

(Los Angeles County  
Super. Ct. No. BP102754)

APPEAL from an order of the Superior Court of Los Angeles County,  
Mitchell L. Beckloff, Judge. Affirmed.

J. B. Casas, Jr. for Objector and Appellant.

Gackle Law Office and G. Steven Gackle for Plaintiff and Respondent.

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This is an appeal from an order of the probate court. The appeal challenges the court's determination that a transfer of real property by a decedent to the appellant by means of a deed, which was accomplished while the decedent was sick in the hospital, was made under the decedent's mistake of law as to the need for such transfer, and moreover, the decedent did not understand the effect of the transfer. The court ruled the record owner of the property holds title to it as a constructive trustee for the decedent's estate. We find the trial court was correct and we will affirm the challenged order.

### ***BACKGROUND OF THE CASE***

#### ***1. The Parties and the Decedent***

This case was initiated in February 2007 by the filing of a petition for letters of administration and authorization to administer the decedent's estate under the Independent Administration of Estates Act. The petitioner is Imelda Casanova (petitioner).

The decedent, Carmen Casanova (decedent), died intestate in September 2006. At one time she had been married to Alfonso Casanova but was divorced from him at the time of her death. Decedent and Mr. Casanova are the parents of petitioner and four other children, Ruben Casanova, Norma Casanova, Olga Mayorga, and Oscar Casanova.

Decedent also had a child, Emily Valdez, before she married Mr. Casanova. After she divorced from Mr. Casanova she married Pedro Salas, with whom she had another child, Ivana Salas, who was born in 1976. Thus, decedent had seven children.

All of the children were alive when decedent passed away. Ms. Salas is the appellant in this appeal (appellant).

At a trial held on a Probate Code section 850 petition to determine the validity of the transfer of interest to appellant in the real property, there was testimony that of the decedent's seven children, Emily Valdez is the oldest, petitioner is the second oldest, both Emily and petitioner were born in Mexico, and appellant is the youngest of the children and was born in Los Angeles.

## *2. The Property*

The petition for letters of administration states the decedent had, at the time of her death, personal property valued at \$5,000, unencumbered real property valued at \$480,000 and situated in the City of Los Angeles, (the real property), and annual gross income from the real property in the amount of \$8,400. The property contains both the decedent's home and a rental unit.

Decedent's former husband Alfonso Casanova quitclaimed the real property to the decedent in 1973. The decedent executed a grant deed on August 10, 2006, whereby she deeded the property to herself and to the appellant as joint tenants. The grand deed recites, in connection with the documentary transfer tax, that the transfer of interest in the real property was a gift and decedent received nothing in return. The deed further recites that the transfer of interest was "for a valuable consideration, receipt of which is hereby acknowledged."

3. *The Probate Section 850 Petition*

After receiving letters of administration, in June 2007 petitioner filed the Probate Code section 850 petition seeking to have the court determine title to the real property and require a transfer of interest in such property to the decedent's estate. Appellant filed an objection to the petition. Several people testified at the trial on the matter, which was held in April 2008. Ultimately the court issued an order granting the section 850 petition and directing appellant to convey the property to petitioner as administrator of the decedent's estate.

4. *The Joint Trial Statement*

Prior to trial on the section 850 petition, petitioner and appellant submitted a joint trial statement to the court in which they stipulated that the decedent entered a hospital in Glendale on August 5, 2006, and on August 8, 2006, decedent was discharged from that hospital and transferred to a hospital in Hollywood. (She was apparently 65 or 68 years old at the time.) They further stipulated that on August 10, 2006, thirty days before she died and while still a patient at the hospital in Hollywood, decedent signed the subject grant deed, and on August 18, 2006, decedent was discharged from that hospital and transferred to Cedars Sinai Hospital where she died intestate on September 9, 2006. Additionally, they stipulated that appellant paid no consideration to the decedent to place her on title to the property, that the subject grant deed was prepared by decedent's granddaughter, Jessica Lam, and that decedent did not speak, read or write English other than recognizing her own name and her children's names.

5. *Evidentiary Presentation at Trial*

The evidence presented to the trial court at the section 850 hearing concerned decedent's education and her relationship with her children and neighbors, decedent's medical condition, and the circumstances surrounding the making and signing of the subject deed.

a. *Decedent's Education and Primary Language*

Emily Valdez, decedent's oldest child (Emily), testified the decedent had two or three years of education and that was in Mexico. Emily and others testified decedent spoke very little English and communicated in Spanish, and they corroborated the parties' joint statement that decedent could not read or write in English. However, there was testimony that she could understand English to a certain extent.

b. *Decedent's Avoidance of Estate Planning*

Decedent never spoke with Emily and petitioner about wills, estate planning or life insurance, and they opined that the decedent did not think about dying and avoided talking about death. Others also testified decedent did not speak of such things.

Petitioner stated decedent never indicated where she wanted her property to go upon her death. Approximately three or four years before decedent passed away, petitioner brought up the topic of life insurance, telling decedent she has a life insurance retirement plan. Decedent made no response.

c. *Decedent's Children*

As noted above, decedent had children by three different men. Petitioner testified she (petitioner) was born in 1960 and is a naturalized citizen of the

United States. Before the decedent was hospitalized, petitioner visited her three or four times a month. Their relationship was good and there was never a time when they had a falling out and did not visit.

Emily testified she was born in Mexico in 1955 and moved to the United States with the decedent and the petitioner in approximately 1962. Emily stated that her having a different father from her half-siblings did not affect her relationship with them when they were growing up because she did not know she had a different father until she was 13 years old, and the information did not alter her relationship with them. All of the children grew up in the house on the subject real property. However, appellant grew up alone with the decedent because the other children are older than she is. All of the children have children of their own except for appellant.

Decedent's daughter Norma Casanova testified she lives close by the subject property and would see decedent two or three times a week. In May 2006 decedent told her that appellant was slipping notes under her door to manipulate decedent by telling decedent that she (appellant) was going to do something to herself because decedent had told her something (or would not tell her something; it is not clear from the testimony). However, decedent never told Norma what appellant put in the notes.

Decedent's daughter Olga Mayorga (Olga) testified she was born in California in 1966 and lives in West Covina. After she moved from the family home she would visit the decedent, sometimes once a month, other times twice a week. Olga and Emily testified that decedent never had a falling out with any of the children.

Appellant testified petitioner sometimes visited decedent once a week and other times once or twice a month. Regarding the other children, appellant stated decedent's daughter Norma Casanova would visit more often; Olga and decedent's son Ruben Casanova would visit every now and then; decedent's son Oscar Casanova would hardly ever visit; and Emily did not visit because she lived far away.

Several of the children testified the decedent assisted her children financially and they believed the decedent treated all of her children equally. Appellant testified decedent made loans to several of the children and one of them (a \$14,000 loan to son Ruben Casanova) had not yet been fully repaid.

In describing her own health condition, Emily stated she has coronary disease, severe neuropathy, and is diabetic. She has had four heart attacks and has had surgery for her heart condition. She is in the process of obtaining the legal status of being considered disabled. After Emily was not able to travel to see decedent (Emily lives in another state), she would call the decedent every weekend. Because of Emily's health, the other children did not initially tell her about the decedent being in the hospitals, but when the decedent became sicker, they let her know and that same day Emily came to Cedars Sinai to stay with the decedent and was there around the clock for eight days. Then when decedent died, Emily came back for the wake and funeral.

Emily testified appellant is considered disabled, and the decedent told Emily such status is due to appellant having a thyroid condition. Olga did not know the specifics of appellant's medical condition because the decedent would not discuss it, but Olga thought appellant took antidepressants and treated with doctors. Petitioner

testified the decedent told her that she wished appellant would get married and move on so that decedent could move back to Mexico to retire.

Appellant stated she and decedent were close and decedent would many times confide in her. Appellant stated she did not get along with some of the children because they harassed her and tried to turn decedent against her. She stated the decedent knew she (appellant) could take care of herself, including being able to care for the real property by collecting the rent, maintaining the property and making payments for bills and the mortgage. The decedent often told her she (appellant) could not count on the other children, and told her that the others would attack her and “take it away from me.” She stated decedent loved her but did not love any of her other children. Decedent used to complain that the other children did not visit her enough. She acknowledged that when Emily came into town to visit decedent at Cedars Sinai money was stolen from Emily’s purse, but she stated she did not recall decedent telling her to give Emily some cash that decedent had at home and in fact she did not give her sister the cash.<sup>1</sup>

Asked whether decedent wanted to leave any token of affection for any of her six other children, appellant stated she did not and decedent told her she had no intention of leaving the other children anything. Asked whether the other children asked to have any of decedent’s possessions, appellant stated they did but they never told her what they wanted. Although appellant stated she has a brother and sister relationship with Ruben, Olga and Norma, she acknowledged she gave them none of decedent’s personal

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<sup>1</sup> Olga testified she was present when decedent asked appellant to give Emily some of decedent’s cash from the house so that Emily would have money for food.



property. She also acknowledged that at the meeting held by the children at decedent's house after decedent passed away she locked the door to decedent's bedroom but she did not do that with the intention of keeping the other children out, and none of them asked to be let into the room.

Asked about her education, appellant stated she received good grades in high school in Los Angeles, she went to college in Mexico, and she would have obtained a bachelor's degree there but for her not having completed her thesis. After studying in Mexico, she studied in Los Angeles at an occupational center, taking classes in English, cosmetology and computers, the latter class being given solely in English. Asked what medication she was currently taking, appellant stated she was on drugs for both hypo and hyper thyroid condition, and she was taking calcium, iron and vitamins. She stated she took antidepressants for three months.

Appellant stated decedent never talked about having a will drawn up. Asked why decedent left her the house, appellant stated it was not because she was disabled but rather because appellant was the one child living with decedent and the other children had realized their own lives and already had their own houses.<sup>2</sup> However, appellant acknowledged that the children who have houses had worked to earn them. Asked whether she was able to work but just never did, appellant stated: "Sometimes I had done it, I had work." She stated she was receiving SSI.<sup>3</sup> She denied telling

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<sup>2</sup> According to the statement of decision, Emily has no house of her own.

<sup>3</sup> In her written response to the section 850 petition, she stated her SSI income was used to pay half of the costs of food, clothing and shelter she and decedent incurred.

decedent that she should leave the house to her, and denied demanding that decedent put her name on the property. She stated she gave decedent nothing of value to be placed on the grant deed, and it was her understanding that she would receive an interest in the property only if decedent passed away.

d. *Grandchildren*

Decedent had many grandchildren. The person who brought decedent to the hospital in Glendale was her grandson Jessie Herrera. He is the son of Norma Casanova.

Jessica Lam, another of the grandchildren, testified she is petitioner's daughter and she was born in 1983. Prior to the decedent going into the hospital, Ms. Lam would visit decedent approximately two to three times a month at decedent's home, and would transport her to family gatherings at petitioner's home or some other family member's house. However, "[t]owards the end" Lam visited decedent more often.<sup>4</sup> Lam stated decedent felt she could rely on Lam; they conversed when they were together, and decedent confided in her and trusted her to do decedent's legal paperwork. Lam accompanied decedent to a bank to open an account because decedent wanted her there in case she needed to have language translated. Decedent did not know what type of account she wanted to open, only that she had \$20,000 that she wanted to put in an account. The account she opened was a CD account, and decedent indicated to the

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<sup>4</sup> Appellant testified Jessica Lam visited "[e]very now and then, not that often."

teller, who spoke Spanish, that she wanted Lam to be the beneficiary noted on the account, but did not tell the teller why.<sup>5</sup>

Asked about the decedent's relationship with her seven children, Lam stated decedent was supportive of all of them, helped all of them financially, and never indicated in Lam's presence that she wanted all of her property to go to appellant if something happened to decedent.

e. *Decedent's Medical Condition*

Jessica Lam testified that for several months before she died, decedent reported feeling fatigued. There was testimony that when decedent was at the hospital in Glendale her eyes and skin were yellow, she was tired and sleeping more, she did not want to eat, she lost the ability to feed herself, she was talkative but did not speak in full sentences, she did not talk as much as she normally would, and she could not walk without assistance.

There was testimony that decedent was at the Glendale hospital for about four days. After decedent went to the hospital in Hollywood she was not talkative, did not speak in full sentences, and was sleeping most of the day. She was under medication. She would say that someone had not been to visit her even though they had, and people began noticing that decedent "was not all there anymore." On the last day she was

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<sup>5</sup> Appellant's explanation for why decedent put the \$20,000 in the bank in Jessica Lam's name instead of her (appellant's) name was that the bank would not let decedent use appellant's name because someone was using her social security number or stealing her identity, but when she called the telephone number that the bank gave decedent to inquire about the problem, the person answering the telephone stated the problem was cleared up and perhaps someone had mistakenly used the wrong social security number.

hospitalized in Hollywood, which would have been decedent's third or fourth day at that hospital, decedent mistook a family member for someone else.

Petitioner testified she visited decedent every day at the Glendale hospital, and tried to visit her every day at the other two hospitals. She stated that when decedent went to the Glendale hospital she (decedent) thought she was going to get better and would ask to be taken home, and when she was first transferred to the hospital in Hollywood she continued to ask to be taken home but later she was not very talkative. Petitioner never heard decedent say she knew she would not be going home.

f. *Decedent's Lending Practice*

Olga testified decedent had a practice for many years of loaning money to people in the community, would take personal property (often jewelry) as collateral for the loans, and would keep the property if the borrower did not pay back the loan. Decedent would show Olga items that were taken as collateral. Petitioner stated decedent kept records of those matters. Appellant testified that when decedent died there was no jewelry in the house that belonged to people to whom decedent had loaned money, and the only jewelry decedent had was two pair of earrings, one of which appellant stated she (appellant) somehow lost. She stated decedent did not like to wear jewelry.

g. *The Making of the Deed*

The day after decedent was admitted to that hospital, petitioner went to visit her and decedent stated a nurse had asked her if she had a will. Petitioner asked decedent what she told the nurse and decedent said "I didn't." When decedent told petitioner she had no will, petitioner suggested to decedent that perhaps decedent ought to do

something. Petitioner told the decedent it was possible that her property would go to the state. Petitioner offered that opinion to decedent because decedent indicated she had no will or “any type of documentation.” Decedent replied she did not want the state to have her property but she did not say to whom she wanted her property to go. Decedent told petitioner she wanted Jessica to call her (meaning petitioner’s daughter, Jessica Lam). Asked whether decedent indicated why it was Jessica that she wanted to speak with, petitioner stated that Jessica had once helped decedent with a loan and decedent “knew she was doing loans” and so petitioner “figured that was the reason.” Petitioner indicated decedent trusted Lam. Decedent would have Lam read letters she could not understand, and Lam help refinance decedent’s home.

Lam testified that when she was in her early 20’s she began working in the mortgage industry. She had two years of community college education, had no background in mortgages, and was being taught the basics of mortgage applications. She had no training as a paralegal nor training in drafting deeds. She stated that when the decedent was at the hospital in Glendale she asked Lam if Lam could help her out with a will and Lam told her she could not. Decedent did not tell Lam what decedent would want to say in the will. Lam testified it was not like decedent to ask such a question because she never brought up anything of that nature, but it was decedent’s understanding that when she died her property would go to the state.

Lam testified that although she declined to draft a will, she told decedent she could “put somebody’s name on deed.” The decedent told Lam that would be fine because she didn’t want the house to go to the state, and so she asked Lam to draft

a deed. Lam did not suggest that decedent confer with an attorney and Lam did not think that decedent spoke with one.

Lam could not remember if anyone else was in decedent's hospital room at the time she and decedent spoke about the will and the deed, however appellant testified she was in the hospital room when decedent asked that a deed be made. The trial court found that although it was "not entirely clear" who else besides decedent and Lam was in the hospital room when the deed was mentioned by Lam, appellant "was likely present" and petitioner "also appears to have been present." The court found that appellant's testimony that she was there was credible and it would explain appellant's subsequent "later actions with Ms. Lam." Apparently the court had reference to Lam's testimony that appellant made repeated calls to her after decedent instructed that a deed be prepared.

Although Lam testified decedent did not tell her what to put in the deed and she put appellant's name on it because appellant still lived with decedent and because the deed was "a temporary thing until she got better," the trial court found that decedent instructed Lam to put appellant's name on the deed, and the court stated that nothing in Lam's testimony suggested that appellant had any involvement in decedent's decision to place appellant on the title to the property. Lam testified she told decedent that decedent could change the deed and make a will after she got better and left the hospital.

Prior to preparing the subject deed, Lam had prepared two deeds by which a parent gave a gift to a child. Someone from the office where Lam worked (a "previous paralegal") helped her with the deed, but only to the extent of talking to

Lam about the deed, not actually drawing up the deed and not giving Lam advice about how to draw up the deed, and this person did not talk with Lam about joint tenancy.

Lam testified she probably put the title in the deed in joint tenancy because the titles she had seen were in joint tenancy. She did not know about the right of survivorship associated with joint tenancy when she drafted the deed, and she thought that the decedent would be able to take appellant's name off of the deed after decedent got out of the hospital.

Prior to the deed being drawn up, Lam discovered that appellant had been calling her daily and leaving messages to see if the deed was ready, and when she received the messages Lam believed that appellant was calling on behalf of decedent. Lam then drew up the deed and took it to the hospital in Hollywood the following morning when she went to visit decedent. Decedent signed the deed August 10, 2006 and Lam notarized it at that time. Lam testified she could not remember if appellant was there when it was signed or if anyone else was present. After it was signed, Lam "gave it to title to record." Decedent did not ask her to have it recorded. Lam did not discuss with decedent whether to hold on to the deed until decedent left the hospital because Lam did not know that it would be "valid" to retain the deed, nor did Lam know that there was a different legal consequence because it was recorded, and that a will had no legal effect on property held in joint tenancy. She also did not know that she could have drafted it to include all seven of decedent's children on the title. Nor did she know that putting the deed in joint tenancy affected an immediate gift to appellant of one-half of the property and the decedent did not indicate that such was her own understanding.

Lam testified it took just minutes for the deed to be signed. Lam read the deed to decedent in English, letting her know that she (decedent) was still on the title and that appellant had been added, and the decedent said nothing. Lam let her know that when she got better, she could have a will made and could make changes to the deed if she so desired. Lam testified that at the time she drew up the deed for decedent, decedent was not aware that her medical condition was terminal, and decedent thought she would get well and leave the hospital and go home.

h. *The Children's Knowledge of the Deed*

There was testimony that at a meeting at Olga's home after decedent was buried, the children discussed the house, observing that the mortgage on it was not paid off and they were concerned that it would not be paid. They did not know that the appellant became the owner of the property upon decedent's death but they knew of the deed to her. Before decedent passed away, appellant told Olga and one of her brothers that there was a document she (appellant) needed and although she had pressed Jessica Lam for it, Lam was not furnishing it. Appellant was adamant about getting the paper, but at that time Olga was not sure what the paper was. The brother phoned Jessica Lam and asked about getting a copy of whatever was drawn up and Jessica agreed to furnish a copy and took it to the hospital. Appellant had the grant deed at Cedars Sinai hospital along with other papers and was passing them around to people who were there, such as decedent's son and daughter-in-law and grandchildren. Olga could not remember if petitioner was there. Olga found it upsetting that papers were being passed around,



thinking it was neither the time nor the place. Olga did not keep a copy of what appellant was passing out and did not read the deed.

i. *Decedent's Friends*

Appellant testified that decedent told her a few years prior to the making of the deed that she wanted appellant to have the house. Two of decedent's friends testified to similar statements by decedent. Both Letricia Quezada (Letricia) and Irena Davalos (Irena) stated decedent told them on more than one occasion that when she died she wanted appellant to have her house when she died. Letricia stated she knew decedent for 40 years, lives close to decedent's home, and visited with her several times a week. Irena, who stated she knew appellant for six years and also lives close to the house, stated she visited with decedent every day and decedent told her the reason she wanted to leave all of her things to appellant was because she was concerned that the other children would put appellant out of the house. Decedent did not think that appellant would ever get married, and decedent felt that the other children had things but appellant had nothing.

Letricia said that Norma Casanova was the only one of decedent's children who visited decedent often, and she hardly ever saw granddaughter Jessica Lam at decedent's house. However she also said that decedent told her that only her son Oscar Casanova remembers her. Irena initially stated that decedent told her for many years that her children did not visit her, and decedent made that statement at a time when Olga began to visit decedent. However, later she testified that Norma and decedent would see each other often. Although Irena stated she and decedent saw each

other every day, were very good friends and shared confidences and there was nothing they would not tell each other, she stated that she had only gone to visit decedent once in the hospital and that was the day on which she died. Irena stated that appellant accompanied her to Mexico in January 2007. Asked if appellant tried to have decedent's house in Mexico transferred into her own name, Irena stated appellant went to Mexico to see the house and obtain information, and while there appellant did some research.

6. *The Trial Court's Decision on the Section 850 Petition*

The court issued a tentative statement of decision in May 2008 wherein it denied petitioner's section 850 petition. Petitioner filed objections to the tentative decision and appellant filed a reply to the objections. By minute order dated June 30, 2008, the court requested additional briefing on certain legal issues concerning who had the burden of proof on the issue where the beneficial interest in the real property rests, including the issues of mistake of law and fact, and undue influence.

Additional briefing was submitted by petitioner and appellant and in August 2008 the court issued its statement of decision. The court determined that under Evidence Code section 662, petitioner had the burden of proof, by clear and convincing evidence, on the issue whether the decedent's transfer of the real property from herself to herself and the appellant was the result of duress, menace or a mistake of fact or law. The court found that the transfer was the result of a mistake of law held by the decedent, and the mistake of law was based on misinformation given to her by the petitioner, to wit, that when the decedent died, the real property would pass to the State of California

unless the decedent made some alternative arrangement for it. The court determined that this mistake of law caused the deed to be drawn up and the mistake was material to the transfer of interest in the real property to the decedent and the appellant as joint tenants because had the decedent not been mistaken about the law and its effect on the real property upon her death, the decedent would not have executed the grant deed.

Additionally, the court addressed the issue of undue influence raised by petitioner and it determined there were three alternative means by which petitioner could prove undue influence to support her section 850 petition. The court determined that petitioner had succeeded on one of those alternatives. Appellant filed objections to the statement of decision and petitioner filed a response.

The court issued a revised statement of decision in September 2008 but the court's determinations regarding mistake of law and undue influence, which it set out in its August 2008 statement of decision, were affirmed by the court, and in November 2008, the court issued an order granting the section 850 petition and directing appellant to convey the property to petitioner as administrator of the decedent's estate. Thereafter this timely appeal was filed.

### ***CONTENTIONS ON APPEAL***

Appellant contends the trial court erred in shifting the burden of proof to her, by means of a certain presumption of law regarding gifts by parents to children, to demonstrate that the decedent fully understood the facts and the legal effect of the grant deed, and moreover, even if the burden did properly shift, appellant demonstrated that

the decedent made the gift of the property freely, with full knowledge of the facts and understanding of the effect of the transfer.

Appellant further contends that decedent's mistake regarding the effect of her dying intestate should not invalidate the transfer because appellant is an innocent party who would suffer an inequity if the deed is set aside because transfer of the property to her caused her disability payments to cease, and it was petitioner, not appellant, who caused the decedent to believe that the property would transfer to the state unless the decedent took action.

### ***DISCUSSION***

#### *1. Standard of Review*

The parties agree that the substantial evidence test is applicable to this appeal.

#### *2. Applicable Law*

Civil Code section 3412 provides for cancellation of void or voidable written instruments. It states: "A written instrument, in respect to which there is reasonable apprehension that if left outstanding it may cause serious injury to a person against whom it is void or voidable, may, upon his application, be so adjudged, and ordered to be delivered up or cancelled."

Probate Code section 850 permits a personal representative to seek such relief on behalf of a decedent's estate. "Section 850 et seq. provides a mechanism for court determination of rights in property claimed to belong to a decedent or another person." (*Estate of Young* (2008) 160 Cal.App.4th 62, 75 [court finding undue influence and fraud in the creation of trusts].)

The trial court in the instant case applied Evidence Code section 662's burden of proof provisions in its consideration of petitioner's Probate Code section 850 request that the court determine title to the subject real property and transfer interest in the property to the decedent's estate. Section 662 provides that "[t]he owner of the legal title to property is presumed to be the owner of the full beneficial title. This presumption may be rebutted only by clear and convincing proof." Section 662 was added by Statutes 1965, chapter 299, section 2, made operative January 1, 1967. The Law Revision Commission Comment for section 662 states the statute codifies a common law presumption that is recognized in California case law. Thus, in *Rench v. McMullen* (1947) 82 Cal.App.2d 872, 874, the court observed that "courts have frequently affirmed" that overcoming the presumption that the owner of legal title to property also owns the full beneficial interest in the property must be accomplished by clear and convincing evidence. Accord *Olson v. Olson* (1935) 4 Cal.2d 434, where the plaintiff was not able to establish to the satisfaction of the trial court, by clear and convincing evidence, that her gift deed to her former husband whereby she transferred her interest in real property that had been held in joint tenancy by them was only meant by both of them to be a temporary arrangement for the purpose of refinancing the property until joint tenancy title could be restored.

3. *The Issue of Mistaken Understanding of the Nature of an Instrument Effecting Property*

In *Shaffer v. Security T. & S. Bank* (1935) 4 Cal.App.2d 707, 712, the executor of a decedent's estate received a judgment for the money paid by the decedent under the

terms of an executory contract for the sale of real property. The reviewing court rejected the defendant appellant's contention that there could be no such relief because the evidence was not sufficient to support a finding that the decedent was of unsound mind and lacked the legal mental capacity to enter into the contract when she signed it. The court said that *when mental weakness that does not amount to disqualification is combined with inadequate consideration or undue influence, or with a mistake as to the nature and effect of an instrument, that will be sufficient ground to cancel the writing.*

One of the cases cited by the *Shaffer* court was *Richards v. Donner* (1887) 72 Cal. 207, where the court found that the evidence at trial demonstrated that the decedent, when he was mentally weak from a stroke, proposed to make a will leaving real property to the defendant and was induced by a neighbor of the defendant to make a deed instead. The decedent was told by the neighbor that a deed would be less trouble and expense, and the neighbor did not explain the difference in the nature, effect and consequences between a will and a deed. The court found that in making the deed, the decedent thought he was making a testamentary disposition of his property, and the court stated that the right of the decedent to recover in the suit in his lifetime, and the right of his executor who was substituted after decedent passed away, "did not depend on the question of the donor's sanity or soundness, nor upon the question of the donee's good faith or undue influence." (*Id.* at p. 211.)<sup>6</sup> Accord *Estate of Brast* (1945) 69 Cal.App.2d 704, 712-716.

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<sup>6</sup> A mistake of a "basic fact" can also be the ground for rescission of gifts other than transfers of real property, or immediate transfers of real property (as can the

*Soberanes v. Soberanes* (1893) 97 Cal. 140 (*Soberanes*) is a case in which a transfer of real property was not set aside by the court. There, a mother transferred to one of her children, by deed, real property valued at \$100,000, which was nearly the whole of her estate. She was in her early 60's at the time of the transfer, uneducated and illiterate, but had always discharged her duties as wife and mother with full competency and prudence. The court found that she was in possession of her natural mental faculties at the time of the transfer and the transfer was the result of her love and affection for her son, the grantee. Moreover, she understood the nature and effect of the transfer, she made it freely, and although she did not have the advice of anyone about the transaction, she did not want such advice. She had five other children but her son had cared for her over the years, resided with her and looked after her interests, taken great interest in her personal welfare, was her sole agent and confidential adviser, and he retained her complete confidence. There were disputes between the children and although the mother implored them to end their quarrels with each other, and frequently said she would only give her property to the children who respected and adhered to her,

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grounds of fraud and misrepresentation). In *Earl v. Saks & Co.* (1951) 36 Cal.2d 602, 609, the court observed that mistakes that entail a substantial frustration of the donor's purpose entitle the donor to rescission of a gift. Thus, when the donor is mistaken as to the identity or essential characteristics of the gift, rescission is warranted. In *Walton v. Bank of California* (1963) 218 Cal.App.2d 527, 542-543, the plaintiff trustor of a trust sought to rescind an inter vivos trust made irrevocable by the terms of the trust. She asserted mistake as to the irrevocability of the trust and the court observed that when there is no consideration given to the trustor for the creation of an inter vivos trust, such trust can be rescinded or reformed for mistake to the same extent as can an outright gift, and it is not material that the mistake is unilateral, that the beneficiaries of the trust did not induce the mistake, know of it or share it, and immaterial whether it is a mistake of fact or law.

in the end she was estranged from all of the children except her grantee son and a married daughter. Some years after the conveyance was made, when the mother had become incompetent, a suit was brought on her behalf by her guardian ad litem to have the conveyance set aside.

The trial court in *Soberanes* denied relief and the reviewing court affirmed, saying that the facts, as found by the trial court, showed that the mother was not the victim of her son's artifices or contrivances and while transfers of the kind at issue in that case "should be thoroughly sifted," there was "no rule which creates a disability to take a bounty under the circumstances narrated," and the voluntary deed from mother to son "cannot be set aside merely upon the ground that an honorable man would not accept a gift which strips his mother of all her property and leaves her dependent upon the charity of others."

The showing that would be required to set aside a deed in cases like *Soberanes* was described by that court as follows. "Transactions like the one under consideration are watched by courts of equity with the most scrutinizing jealousy, and are generally held to be presumptively void. They will be set aside upon the discovery of the least fraud, and every presumption ought to be indulged against them. The person who makes the donation and bestows the confidence is not bound to show that any imposition has been practiced upon him. It is sufficient for him to establish intimate and confidential relations with the donee. Some of the cases hold that undue influence is not to be inferred from the relation of parent and child, where the gift is from the parent to the child (*Millican v. Millican*, 24 Tex. 446); *but where the parent is of great*



*age, or is enfeebled by disease, and conveys his entire estate to one child, to the exclusion of other children dependent upon his bounty, the burden is unquestionably upon the donee to show that the gift was made freely and voluntarily, and with full knowledge of all the facts, and with perfect understanding of the effect of the transfer. (Todd v. Grove, 33 Md. 194; Highberger v. Stiffler, 21 Md. 352; 83 Am. Dec. 593.)”*  
(Italics added.)

4. *The Trial Court’s Apportionment of Burdens of Proof in the Instant Case*

In its revised statement of decision, the trial court observed that it had previously requested briefing on the relationship between *Soberanes* and Evidence Code section 662. After receiving the parties’ briefs, the court concluded that (1) section 662 imposed on petitioner the burden of proving duress, menace, or mistake by clear and convincing evidence in order to set aside decedent’s deed, and (2) under cases such as *Soberanes*, petitioner’s claim of undue influence “requires different considerations.”

a. *Duress, Menace, Mistake*

Reviewing the evidence, the court concluded petitioner did not meet her section 662 burden of proof with respect to the grounds of duress or menace, but did meet it on the ground of mistake. The court cited Civil Code sections 1577 (mistake of fact) and 1578 (mistake of law) and found that although there was no mistake of fact there was a mistake of law. Section 1577 defines mistake of fact as “a mistake, not caused by the neglect of a legal duty on the part of a person making the mistake, and consisting in: [¶] (1) An unconscious ignorance or forgetfulness of a fact past or present, material to the contract; or, [¶] (2) Belief in the present existence of a thing

material to the contract, which does not exist, or in the past existence of such a thing, which has not existed.” Section 1578 defines mistake of law as “a mistake, within the meaning of this article, only when it arises from: [¶] (1) A misapprehension of the law by all parties, all supposing that they knew and understood it, and all making substantially the same mistake as to the law; or, [¶] (2) A misapprehension of the law by one party, of which the others are aware at the time of contracting, but which they do not rectify.”

The court found there was no mistake of fact connected with the decedent’s signing of the deed. Based on evidence presented at trial, the court found that (1) decedent wanted appellant’s name put on the deed and specifically told Lam to put appellant’s name on the deed, (2) Jessica Lam read the deed to the decedent, and (3) by making her instructions to Lam and signing the deed, decedent insured that appellant would be the person who takes the property. The court rejected decedent’s lack of formal education as an indication decedent did not understand that property would transfer. Rather, said the court, the decedent intended to add appellant’s name to the title.

However, the court found there was a mistake of law on decedent’s part—that the property would go to the state unless she made some specific arrangement for it. By clear and convincing evidence the court found that but for that mistake of law, the decedent would not have deeded the property to appellant. The court found the mistake arose when the hospital nurse inquired of decedent if she had a will and petitioner advised decedent that her property would go to the state absent some provision for it,

and then Jessica Lam, whom the decedent trusted and relied on with respect to legal issues, did not dispel that belief but rather suggested that a deed be used to solve the perceived problem of escheatment. The court observed that evidence showed decedent did not like thinking about her death and issues relating to death, and only acted on the deed because of the mistake of law concerning what would happen to her property if she did not take action. Finding that the deed was a gift to appellant made as a result of a mistake of law, the court ruled it was subject to rescission.

b. *Undue Influence*

Regarding the ground of undue influence, the court noted Probate Code section 6104's provisions that "[t]he execution or revocation of a will or a part of a will is ineffective to the extent the execution or revocation was procured by duress, menace, fraud, or undue influence," and noted that the same principles that govern wills also govern revocable inter vivos trusts and deeds. The court stated that "courts have developed special rules concerning the burden of proof and undue influence claims related to estate planning" which "requires the court to consider and reconcile competing presumptions under the law." The court reviewed general case law principles regarding undue influence, including facts that can raise a presumption of undue influence, and noted that "as to inter vivos transfers between a parent and child, there is a long standing rule that such transfers are reviewed by the court with substantial scrutiny." The court cited the *Soberanes* case. The court stated that because undue influence cases have specific presumptions affecting the burden of proof, those

specific presumptions control over the general presumption in Evidence Code section 662.

Applying those matters to the instant case, the court ruled petitioner could raise the presumption of undue influence, and shift the burden of proof to appellant to show there was no undue influence, if petitioner could show by a preponderance of the evidence that the appellant had a confidential relationship with decedent, actively participated in procuring the deed, and would benefit unduly by the deed because it is an unnatural gift by a parent. Alternatively, said the court, petitioner could raise the presumption of undue influence with a preponderance of such evidence as was addressed in *Soberanes*, and thereby shift the burden of proof to appellant. The court stated that in either situation, by successfully demonstrating the foundational facts to raise either of those presumptions, Evidence Code section 662 would not be applicable because the more specific presumption would control.

The court stated that absent the ability to present foundational facts to raise one of those presumptions, petitioner would have to prove by clear and convincing evidence that appellant used influence on decedent, amounting to coercion that destroyed the free agency of decedent, as a means of procuring the challenged deed. The court cited *Estate of Mann* (1986) 184 Cal.App.3d 593.

Regarding the first alternative, the court found that the evidence would not support findings that appellant had a confidential relationship with decedent and actively procured the deed. Thus, the presumption of undue influence did not rise in that manner.

Nor, said the court, could petitioner sustain her third alternative—a section 662 burden of clear and convincing evidence by showing that the deed was the result of great pressure by appellant amounting to coercion. The court noted there was evidence that decedent told Jessica Lam at the hospital to put appellant on the title, and that decedent had already told her two friends that she intended to leave the property to appellant so that the other children could not put appellant out of the home.

However, the court found that the facts of the case raise the *Soberanes* parent-child presumption (alternative two) because decedent was elderly, enfeebled by disease, and she conveyed her estate to appellant to the exclusion of her other children who had sought financial aid from decedent from time to time, and further, one of the children, Emily, suffered from health problems as appellant does. Thus the burden was shifted to appellant to show that the gift to appellant was both freely and voluntarily made, and made with full knowledge of all the facts and the effect of the transfer. (*Soberanes, supra*, 97 Cal. at pp. 145-146.) The court observed, as it had done earlier, that decedent was operating under a mistake of law regarding escheating of property to the state. Thus, she did not understand the facts of her situation. Moreover said the court, there is no evidence that she understood the effect of her transfer—that the deed made an *immediate transfer* of property to appellant giving appellant an immediate ownership interest in it.

In summary, the court found two grounds for granting petitioner's section 850 petition—the deed was drawn up and executed based on a mistake of law, and under *Soberanes*, there was a presumption that the deed was void and should be set aside

because decedent was enfeebled and there was a lack of evidence that decedent made the deed with full knowledge of the facts and understanding of the effect of the deed.

We find that the trial court's analysis is reasonable on both grounds, and appellant's brief does not convince us otherwise. Thus, there are alternative reasons for affirming the probate court's order.

5. *There Is No Merit to Appellant's Arguments*

Citing *Broadbuss v. James* (1910) 13 Cal.App. 464, 472-473, appellant contends that the *Soberanes* presumption only arises when there is shown to be fraud or a confidential relationship between parent and child, and a mere parent-child relationship is not sufficient to raise a presumption of fraud or undue influence. Appellant is partially right. Both *Soberanes* and *Broadbuss* do observe that a mere parent-child relationship will not invalidate a gift. However, those cases also hold that a showing by the grantor of fraud or confidential relationship is not necessary to have a gift set aside when the parent is elderly or enfeebled by disease and has conveyed his or her entire estate to one of several children who are dependent on the parent's bounty. Under those circumstances, it is the donee who bears the burden of proof on the validity of the transfer and must show that the transfer was freely and voluntarily made with knowledge of the facts and understanding of the effect of the transfer. (*Soberanes*, *supra*, 97 Cal. at p. 145; *Broadbuss*, *supra*, 13 Cal.App. at p. 475.)

Nor can we agree with appellant's treatment of the "enfeebled by disease" portion of the *Soberanes* analysis. Appellant asserts that "[p]hysical condition alone does not furnish sufficient evidence of mental incapacity. Capacity to execute a deed

requires soundness of mind, not of body. . . . In addition, neither illiteracy nor lack of experience in ordinary business affairs affects the capacity of a grantor who fully understands the nature of the transaction. [Citation.]” This analysis misses the point of *Soberanes* and *Shaffer v. Security T. & S. Bank, supra*, 4 Cal.App.2d 707, 712. Neither case requires a showing of mental incapacity by the person challenging a parent’s transaction. *Soberanes* speaks of parents who are enfeebled by disease, not parents who are mentally incapacitated. Indeed, for such enfeebled parents, *Soberanes* requires that the donee child demonstrate that the donor parent had a “full knowledge of all the facts, and [a] perfect understanding of the effect of the transfer.” Such a showing would not be made if the parent was mentally incapacitated when the transfer was made.

Likewise, the *Shaffer* court rejected a defendant appellant’s contention that the executor of a decedent’s will could not prevail on his action for rescission of a contract made by the decedent because the evidence was not sufficient to support a finding that the decedent was of unsound mind and lacked the legal mental capacity to enter into the contract when she signed it. As noted above, the *Shaffer* court said that when mental weakness that does not amount to disqualification is combined with inadequate consideration, or undue influence, or a mistake as to the nature and effect of an instrument, that combination will be sufficient grounds to cancel a writing.

Here, substantial evidence supports the trial court’s finding that petitioner met her burden of proof in invoking the *Soberanes* presumption. There is sufficient evidence showing that decedent was both elderly and enfeebled. She was in the hospital and clearly enfeebled when she asked that the deed be made and when she executed it.

Indeed, appellant states in her brief that decedent “was in a weak physical condition at and prior to the date of the execution of the deed.”

Further, there is sufficient evidence to support the court’s finding that decedent made a gift to appellant of her only real asset and in doing so, excluded the other children from her estate. The evidence shows decedent had loaned money to her children, and appellant acknowledges that fact by stating in her brief that decedent “helped her other six children financially for many years.” One of those children had yet to pay back a significant portion of the loan. Moreover, at least one of decedent’s children, Emily, suffers significant health problems and was in the process of applying for disability. Emily testified that because of her health problems, the other children did not initially tell her that decedent had been taken to the hospital. She stated that decedent sent her money when she (Emily) had one of her four heart attacks. Thus, appellant’s assertion that she (appellant) is the only person dependent on decedent’s bounty is refuted by the evidence. While appellant contends that Emily was not dependent on decedent because Emily has three children, and at one time lived with one of them and had a boyfriend, there is no evidence that Emily’s children (or boyfriend) are in a position to support her financially.

Such evidence shifted the burden to appellant to demonstrate that decedent made the gift to appellant freely and voluntarily, with knowledge of all the facts and a perfect understanding of the effect of the gift. The trial court did find that appellant met part of that burden. It found decedent made the transfer of interest in the property to appellant freely and voluntarily. There was evidence that decedent had told her friends Letricia



and Irena that she wanted appellant to have the house and be able to stay there for the rest of her life, and evidence that she told Jessica Lam to put appellant's name on the deed. However, the court also found decedent did not understand the law regarding escheatment and decedent felt it necessary to execute some kind of writing. Moreover, as the court noted, appellant did not establish that decedent understood that her execution of the deed affected an immediate transfer of interest to appellant. Further, there is evidence that Jessica Lam told decedent she could change the deed and make a will after she got better and left the hospital.

Had decedent understood the law with respect to escheatment, and understood the effect of executing the deed, she could have, for example, made a trust that provided for a life estate to appellant in decedent's home and a gift to all of the children of the rental income that the property produced, and that would have satisfied decedent's desire to have appellant remain in the home for the rest of appellant's life, without precluding the other children from sharing in decedent's bounty when she died.

Lastly, we reject appellant's contention that decedent's mistake of law should not result in setting aside the deed since appellant is an innocent party who would suffer an inequity if the trial court's judgment stands. She argues that decedent neglected her legal duty to inquire about estate planning. Appellant bases her argument on case law in which a person making a contract or deed seeks rescission. However, the grantor's "neglect of a legal duty of inquiry" is not an element in the holdings in *Soberanes* and *Shaffer*. Accord *Richards v. Donner, supra*, 72 Cal. 207, where a grantor recovering from a stroke executed a deed rather than a will because a neighbor told him that a deed

would be less trouble and expense but did not tell him the difference in the consequences and effect of the deed as opposed to the will, and the deed was set aside by the court. Nor are we persuaded by appellant's argument that she received disability payments until decedent died and this fact impacts the case. Even if in some manner the cessation of payments could affect the case, appellant acknowledges that the record is not clear why the payments stopped (but she states it can be inferred it was due to her having an asset in her name—the subject property). Moreover, she does not indicate why the disability payments could not commence again when we affirm the probate court's order.

***DISPOSITION***

The probate court order from which appellant has appealed is affirmed. Costs on appeal to petitioner.

***NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS***

CROSKEY, J.

WE CONCUR:

KLEIN, P. J.

ALDRICH, J.